

securities will mature on the latest maturity date of the Underlying Securities. However, due to the pass-through nature of the ABS Securities, the level of risk involved in the purchase or sale of the ABS Securities is similar to the risk involved in the purchase or sale of traditional common stock.

The Commission notes that the Exchange's rules and procedures that address the special concerns attendant to the trading of hybrid securities will be applicable to the ABS Securities. In particular, by imposing the hybrid listing standards, suitability, disclosure, and compliance requirements noted above, the Commission believes the Exchange has addressed adequately the potential problems that could arise from the hybrid nature of the ABS Securities. Moreover, the Commission notes that the Exchange will distribute a circular to its membership calling attention to the specific risks associated with the ABS Securities.

The Commission notes that the ABS Securities are dependent upon the individual credit of the issuers of the Underlying Securities. To some extent this credit risk is minimized by the Exchange's listing standards in section 107A of the Company Guide which provide that only issuers satisfying asset and equity requirements may issue securities such as the ABS Securities. In addition, the Exchange's "Other Securities" listing standards further provide that there is no minimum holder requirement if the securities are traded in thousand dollar denominations.<sup>25</sup> The Commission notes that the Exchange has represented that the ABS Securities will be listed in \$1000 denominations with its existing debt floor trading rules applying to the trading. In any event, financial information regarding the issuers of the Underlying Securities will be publicly available.<sup>26</sup>

Due to the pass-through and passive nature of the ABS Securities, the Commission does not object to the Exchange's reliance on the assets and stockholder equity of the Underlying Securities rather than the Trust to meet the requirement in section 107A of the Company Guide. The Commission notes that the distribution and principal amount/aggregate market value requirements found in sections 107A(b) and (c), respectively, will otherwise be met by the Trust as issuer of the ABS Securities. Thus, the ABS Securities will conform to the initial listing

guidelines under section 107A and continued listing guidelines under sections 1001–1003 of the Company Guide, except for the assets and stockholder equity characteristics of the Trust. At the time of issuance, the Commission also notes that the ABS Securities will receive an investment grade rating from an NRSRO.

The Commission also believes that the listing and trading of the ABS Securities should not unduly impact the market for the Underlying Securities or raise manipulative concerns. As discussed more fully above, the Exchange represents that, in addition to requiring the issuers of the Underlying Securities meet the Exchange's section 107A listing requirements (in the case of Treasury securities, the Exchange will rely on the fact that the issuer is the United States Government rather than the asset and stockholder tests found in section 107A), the Underlying Securities will be required to meet or exceed the Exchange's Bond and Debenture Listing Standards pursuant to section 104 of the Amex's Company Guide, which among other things, requires that underlying debt instrument receive at least an investment grade rating of "B" or equivalent from an NRSRO.

Furthermore, at least 75% of the basket is required to contain Underlying Securities from issuances of \$100 million or more. The Amex also represents that the basket of Underlying Securities will not be managed and will remain static over the term of the ABS securities. In addition, the Amex's surveillance procedures will serve to deter as well as detect any potential manipulation.

The Commission notes that the investors may obtain price information on the Underlying Securities through market vendors such as Bloomberg, or through Web sites such as <http://www.investinginbonds.com> (for Underlying Corporate Bonds) and <http://publicdebt.treas.gov> and <http://www.govpx.com> (for Treasury Securities and GSE Securities, respectively).

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Amex has requested accelerated approval because these products are virtually identical to Select Notes Trust currently listed and traded on the Amex.<sup>27</sup> The Commission believes that the ABS Securities will provide investors with an additional investment choice and that accelerated approval of the proposal will allow investors to begin trading the ABS

Securities promptly. Additionally, the ABS Securities will be listed pursuant to Amex's existing hybrid security listing standards as described above. Based on the above, the Commission believes that there is good cause, consistent with sections 6(b)(5) and 19(b)(2) of the Act<sup>28</sup> to approve the proposal on an accelerated basis.

## V. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>29</sup> that the proposed rule change (SR-Amex-2003-99) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>30</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04–2826 Filed 2–9–04; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49180; File No. SR–BSE–2004–02]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to Complex Orders

February 3, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> notice is hereby given that on January 28, 2004 the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rule regarding Complex Orders. The text of the proposed rule change is available at the Exchange and at the Commission.

<sup>28</sup> 15 U.S.C. 78f(b)(5) and 78s(b)(2).

<sup>29</sup> 15 U.S.C. 78o–3(b)(6) and 78s(b)(2).

<sup>30</sup> 17 CFR 200.30–3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b–4.

<sup>25</sup> See Company Guide section 107A.

<sup>26</sup> The ABS Securities will be registered under section 12 of the Act.

<sup>27</sup> See *supra* note 12.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

The purpose of the proposed rule change is to amend Chapter V, Section 27 of the Rules of the Boston Options Exchange (the "BOX Rules") relating to the trading of Complex Orders. The Exchange is proposing to amend Section 27 by adding new paragraph (c) specifying the process by which Boston Options Exchange ("BOX") Options Participants ("BOX Participants") must notify BOX of a proposed Complex Order strategy. The Exchange is also setting forth, in the same paragraph, that an advisory message regarding a Complex Order strategy would be sent by BOX to all BOX Participants at its creation and prior to the start of its trading.

Each Complex Order strategy would be treated as a separate trading instrument on the Complex Order Book. During the trading day BOX would maintain a listing, accessible to all BOX Participants through the BOX system, of all Complex Order strategies available on BOX. This list would not show any orders or prices. A BOX Participant who wishes to propose trading in a Complex Order strategy, that is not already listed as available on the BOX Complex Order Book, must either send an electronic Complex Order strategy request to BOX through the BOX trading system or make a telephone request with the BOX Market Operations Center. Along with this request, the BOX Participant may also place a Complex Order in the proposed strategy. BOX would check each strategy request to validate that the option components of the strategy are listed on BOX and that the Complex Order type is available on BOX.

After validation, an "advisory" message regarding the Complex Order strategy would be sent by BOX to all BOX Participants, stating the terms of

the strategy created and the time when Complex Orders on the new strategy will begin to trade. Trading would not begin until at least five minutes has elapsed from the time the advisory message was sent from BOX to all BOX Participants. Any Complex Orders on the newly-created strategy that are received prior to the start of trading would be placed in the Complex Order Book. Complex Orders on the Complex Order Book are not disseminated to the Options Price Reporting Authority ("OPRA"), but are separately disseminated by BOX through a broadcast to all BOX Participants, showing the five best limits for each strategy. Trading in the newly-created strategy would commence at the time announced in the advisory message.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b) of the Act,<sup>3</sup> in general, and Section 6(b)(5) of the Act,<sup>4</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest by granting the Exchange greater authority to regulate the trading of Complex Orders.

### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act<sup>5</sup> and Rule 19b-4(f)(6)<sup>6</sup> thereunder because it does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the

Commission may designate; and the Exchange has given the Commission written notice of its intention to file the proposed rule change. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Under Rule 19b-4(f)(6)(iii) of the Act,<sup>7</sup> the proposed rule change does not become operative for 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Exchange has requested that the Commission accelerate the thirty-day operative date of the proposal and waive the requirement that the Exchange submit the pre-filing period written notice of its intent to file the proposed rule change at least five business days prior to the filing date, so that the Exchange may remain competitive with other exchanges that currently have similar rules in effect and may begin the trading of Complex Orders in options on the Exchange. The Commission, consistent with the protection of investors and the public interest, has determined to waive the requirements that notice be filed at least five business days prior to the filing and to accelerate the 30-day operative date to February 3, 2004,<sup>8</sup> and, therefore, the proposal is effective and operative on that date.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Comments may also be submitted electronically at the following e-mail address: [rule-comments@sec.gov](mailto:rule-comments@sec.gov). All comment letters should refer to File No. SR-BSE-2004-02. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail

<sup>7</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>8</sup> For purposes only of accelerating the 30-day operative period for this proposal, the commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

<sup>3</sup> 15 U.S.C. 78f(b).

<sup>4</sup> 15 U.S.C. 78f(b)(5).

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>6</sup> 17 CFR 240.19b-4(f)(6).

but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-BSE-2004-02 and should be submitted by March 2, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04-2760 Filed 2-9-04; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49171; File No. SR-BSE-2004-03]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to Its Boston Options Exchange Trading Rules

February 2, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 29, 2004, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange.<sup>3</sup> The BSE has submitted the proposed rule change under Section 19(b)(3)(A) of the Act<sup>4</sup> and Rule 19b-4(f)(6) thereunder,<sup>5</sup> which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit

comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The BSE proposes to add new paragraph (f), relating to anticipatory hedging, to Chapter III, "Business Conduct," Section 4, "Prevention of the Misuse of Material Nonpublic Information," of the Boston Options Exchange trading rules ("BOX Rules"). Proposed new language is *italicized*.

\* \* \* \* \*

#### Chapter III Business Conduct

##### Sec. 4 Prevention of the Misuse of Material NonPublic Information

(a)-(e) no change

(f) *It may be considered conduct inconsistent with just and equitable principles of trade for any Participant or person associated with a Participant who has knowledge of all material terms and conditions of:*

(i) *an order and a solicited order,*

(ii) *an order being facilitated or submitted to the Price Improvement Period, or*

(iii) *orders being crossed;*

*the execution of which are imminent, to enter, based on such knowledge, an order to buy or sell an option for the same underlying security as any option that is the subject of the order, or an order to buy or sell the security underlying such class, or an order to buy or sell any related instrument until (a) the terms and conditions of the order and any changes in the terms and conditions of the order of which the Participant or person associated with the Participant has knowledge are disclosed to the trading crowd, or (b) the trade can no longer reasonably be considered imminent in view of the passage of time since the order was received. The terms of an order are "disclosed" to the trading crowd on BOX when the order is entered into the BOX Book or the Price Improvement Period, as defined in Chapter V, Section 18 of these Rules. For purposes of this Paragraph (f), an order to buy or sell a "related instrument" means, in reference to an index option, an order to buy or sell securities comprising 10% or more of the component securities in the index or an order to buy or sell a futures contract on an economically equivalent index.*

\* \* \* \* \*

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The purpose of the proposed rule change is to add new paragraph (f), relating to anticipatory hedging, to Chapter III, "Business Conduct," Section 4, "Prevention of the Misuse of Material Nonpublic Information," of the BOX Rules. Currently, Chapter III, Section 4 of the BOX Rules contains policies and procedural requirements, as well as definitional language, regarding the obligations of Boston Options Exchange participants ("BOX Participants") to prevent the misuse of material nonpublic information. To remain consistent with similar rules of other options exchanges, the BSE is proposing to adopt new paragraph (f) regarding anticipatory hedging. The rest of Chapter III, Section 4, will remain unchanged.

Paragraph (f) would expressly prohibit any BOX Participant or person associated with a BOX Participant who has knowledge of the material terms and conditions of a solicited order, an order being facilitated or submitted to the Price Improvement Period ("PIP"),<sup>6</sup> or orders being crossed, the execution of which are imminent, from entering, based on such knowledge, an order to buy or sell an option for the same underlying security; an order to buy or sell the security underlying such class; or an order to buy or sell any related instrument. The prohibition would remain in effect until the terms and conditions of such solicited, facilitated, PIP or crossed order are disclosed to the trading crowd, or until the trade can no longer reasonably be considered imminent in view of the passage of time since the order was received.

To allow BOX Participants to know what constitutes a "related instrument"

<sup>6</sup> See BOX Rules Chapter V, Section 18.

<sup>9</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> File No. SR-BSE-2004-03 replaces and supersedes File No. SR-BSE-2003-24. See letter from John Boese, Vice President, Legal and Compliance, BSE, dated January 23, 2004.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>5</sup> 17 CFR 240.19b-4(f)(6).